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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,460	03/22/2004	Harriet Kirkpatrick	047144/275346	2926
826	7590	12/20/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			PALO, FRANCIS T	
		ART UNIT	PAPER NUMBER	3644
DATE MAILED: 12/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/807,460	KIRKPATRICK, HARRIET
	Examiner	Art Unit
	Francis T. Palo	3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 6-8, 10-14, 16, 18 and 22-39 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5, 9, 15, 17, 19 and 20 is/are rejected.
- 7) Claim(s) 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 March 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

Claims 6-8, 10-14, 16, 18 and 22-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on 10/31/05.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5, 9, 15, 17 and 19-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, **to make** and/or use the invention.

Specifically, independent claim-1 recites three panels and two fasteners, presumable represented by figures 9A and 9B, and further discussed in the written description at page-11 in the third paragraph.

Three lines of description are provided in the written disclosure to facilitate an understanding of the instant invention, and it is unclear to the Examiner if the depiction of figure-9A is representative of the configuration recited in claim-1 and its dependent claims, the Examiner submits it does not.

The Examiner requests clarification and support for the claims; specifically, what constitutes a first and second side of the claimed panels to effect the construction of the independent claim and the dependent claims.

Furthermore, figures must be provided and technical disclosure must be provided in consideration of the instant claimed invention as represented by the elected claims and all the claimed features should be represented in the figures (i.e., the fourth panel of claim-9 [which may further be withdrawn as directed to a non-elected species (the instant invention concerns a three-sides construction, not a four-sided construction)]; also the anchoring feature of claim-15).

In consideration of the lack of enablement as discussed above, the Examiner respectfully submits the following claim rejections.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9, 15, 17 and 19-21 are rejected under 35 U.S.C. 102(b)

as anticipated by or, in the alternative, under 35 U.S.C. 103(a)

as obvious over O'Donnell (US 4,363,189) 1982.

Regarding claim-1:

In consideration of the discussion above, O'Donnell depicts a modular planter kit in figures 6, 8 and 9 readable on the instant claim and figure-9A; specifically, three side panels (42) are depicted as well as a plurality of fasteners (48), which O'Donnell teaches at column-4 in the second paragraph to be removable.

Regarding claim-2:

The discussion above regarding claim-1 is relied upon.

As discussed above, O'Donnell depicts a plurality of removable fasteners (48).

Regarding claim-3:

The discussion above regarding claim-1 is relied upon.

O'Donnell depicts a plurality of planar panels in figure-6.

Regarding claims 4 and 5:

The discussion above regarding claim-1 is relied upon.

O'Donnell depicts fasteners (48) and (18) readable on the instant claim.

Regarding claim-9:

The discussion above regarding claim-1 is relied upon.

O'Donnell depicts a fourth panel (46) in figure-6 readable on the instant claim.

Regarding claim-15:

The discussion above regarding claim-1 is relied upon.

O'Donnell depicts in figure-6 structure (44) capable of anchoring as cited, whereby the elements (44) extend below the side panels.

Regarding claims 17, 19, 20 and 21:

The discussion above regarding claim-1 is relied upon.

The device of O'Donnell is capable of the instant claim limitations as cited.

Regarding claim-21:

Claim-21 is tentatively objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

In consideration of the 35 U.S.C. 112 rejections raised above, references are provided in the PTO-892 form for the Applicant's consideration.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo
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Primary Examiner
Art Unit 3644